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**Iowa Farmland Legal Update**  
*Partition Law*  
*Des Moines, Iowa*

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**October 3, 2019**

# Contact Information

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# Tenants in Common

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# Partition

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- Where property, real or personal, is owned jointly or in common by two or more parties, a partition action may be brought in equity to divide the property into individually owned interests.
  - Iowa Rule of Civil Procedure 1.1201 et seq. and Iowa Code Chapter 651 have governed partition actions in Iowa.

# Partition

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- Partition in kind
- Partition by sale (was *highly* favored in Iowa)

# Partition in Kind

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- *Newhall v. Roll*, No. 14-1622 (Iowa Sup. Ct. Dec. 23, 2016)
- Best recent overview of Iowa partition law:
  - Iowa law has always favored ***partition by sale***, not ***partition in kind*** (many other states favor partition in kind—avoid forced sale)
    - Person seeking partition in kind has burden to prove both **equitable** and **practicable**.

# Partition in Kind

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- Two tracts, one in Hardin County and one in Butler County. Difference in value between two tracts was \$151,000-\$535,500.
  - Sister offered equalization payment to make up the difference.
    - Family farm, sister and brother both claimed emotional connection to land. Brother lived in North Dakota, but continued to farm Iowa property. Sister lived nearby and took care of her parents until they died.
    - Sister wanted to avoid tax liability.

# Partition in Kind

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- Supreme Court denied sister's request for partition in kind.
  - Did not prove both **equitable and practicable** to get the home place.
    - They both wanted it. Not easy to apportion fairly.

# Partition in Kind

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*Wihlm v. Campbell*, No. 15–0011 (Iowa Sup. Ct. Jan. 12, 2018).

- Three siblings inherited approximately 300 acres of farmland--including a multi-generational family homestead--from their father.
  - Two siblings wished to sell
  - The third sibling wished to retain the homestead, a property that had been in the family for many years.

# Partition in Kind

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- At trial, owner of a real estate business testified that the parcels should be sold together to maximize their sales price. This expert, who was not a certified appraiser, testified that he did not believe that appraisal values would yield a fair result if the property were to be divided in-kind.
- Certified appraiser testified that the parcels requested by the third sibling could be divided from the remainder of the properties without materially impacting the sale value of the remainder.

# Partition in Kind

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- Trial court sided with **sale**: “the volatile nature of farmland as affected by the crop prices has made a partition in kind merely guesswork when factoring in the nature and qualities of the land.”
- Court of Appeals **reversed**.
  - Because the property she requested was a multi-generational family farm, the sentimental attachment she may have to the property *weighed in favor of dividing her interest in kind*.
- **Supreme Court reinstated district court opinion and land was sold.** Relied on *Newhall*.

# Legislature Intervenes

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- SF 2175 signed into law on April 11, 2018. Effective July 1, 2018.
- Replaced Iowa Code ch. 651, completely overhauling the partition process for *heirs property*.

# Heirs Property

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- Real property held in tenancy in common that satisfies all of the following requirements:
  - No recorded agreement binding all cotenants.
  - One or more cotenants acquired title from living or deceased relative.
  - *Any* one of the following:
    - At least 20% interests held by relatives
    - At least 20% interests held by individual who acquired title from a relative
    - At least 20% of cotenants are relatives

# “Relative” is Broadly Defined

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- Ascendant, descendant or *collateral*
  - Related by
    - Blood
    - Marriage
    - Adoption
    - Other law
  - Related under law of intestate succession

Result: *Lots* of Heirs Property in Iowa

# Same Starting Premise

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- Partition is an equitable proceeding, and partition by sale is to be the default unless a court determines (in response to a request by one of the parties) that partition in kind is equitable and practicable.
- *Non-heirs* property
  - Still favors partition by sale.

# Heirs Property

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If **partition in kind is requested** for *heirs property*, partition action proceeds under new **Subchapter III**.

1. Court will appoint a referee to obtain an appraisal using three disinterested persons.
2. The referee files appraisal with court.
3. Within *10 days* of the filing of the report, the court sends notice stating:
  - a) FMV of property
  - b) Address where appraisal may be reviewed
  - c) That each party has 30 days to object

# Heirs Property

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- Court first seeks to facilitate a buyout:
  - Notice: Any party not requesting a sale may elect to buyout others at FMV.
    - 45 days to decide
- Once time passes, several possibilities:
  - If one cotenant buys all, game over
  - If more than one elects to buy all, court allocates right based upon fractional interest held

# Example

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- Jane is a  $\frac{1}{2}$  owner. Ben is a  $\frac{1}{4}$  owner. They each elect to buy out Sam, who is  $\frac{1}{4}$  owner.
  - Jane has right to buy  $\frac{1}{2} \times \frac{4}{3} = \frac{2}{3}$  of Sam's  $\frac{1}{4}$  share
  - Ben has right to buy  $\frac{1}{4} \times \frac{4}{3} = \frac{1}{3}$  of Sam's  $\frac{1}{4}$  share

# Heirs Property

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- If no cotenant elects to buy interests of cotenant who wants a sale, court will send notice that **case will be resolved under Iowa Code § 651.30.**
- If cotenants who elected to buy do not pay within 60 days, court gives option to remaining purchasing tenants to buy.
- If no one elects to buy, **case is resolved under Iowa Code § 651.30.**

# Heirs Property

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## Iowa Code § 651.30 “Great Prejudice” Analysis

- Court will order property partitioned in kind *unless* this will result in ***great prejudice to cotenants as a group***.
  - Practicably divided?
  - FMV *materially lower* after partition?
  - Tax consequences?
  - Lawful use harmed by division?
  - Degree of contribution?

# Owerty

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- Referees may now recommend owerty payments to even out division of property. This is an equitable remedy.
- Owerty must be approved by the court.
  - *Example:* You get forty acres. I get 60 acres, but I pay you \$50K.

# Thoughts

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- If a tenant in common wants to retain family property, he or she will have much greater chance of doing so.
  - Will depend, in part, on percentage owned by those who want partition in kind.
- May result in more family settlements once operation of the law is well understood.
- **Solid transition planning is still most important tool to avoid family disputes and ensure property passes as desired.**

# Other Tenants in Common Issues

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**My three siblings and I inherited farmland  
“share and share alike.” Three of us get  
along, but one is always challenging  
everything we do. What options do we have?**

# Tenants in Common - Lease

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- “***Ordinarily a lease of the entire estate by one tenant in common is not binding on other tenants in common who have not authorized or ratified it.***” *Dethlefs v. Carrier*, 64 N.W.2d 272, 274 (Iowa 1954); *Miller v. Gemricher*, 183 N.W. 503 (Iowa 1921).
- But, where a lease is made by one tenant in common and the lessee takes possession and continues to pay rent, it will be presumed that the lease was made with the knowledge and consent of the other tenants in common, absent evidence to the contrary. *Dethlefs*, 64 N.W.2d at 274.

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**My client recently purchased a 120-acre parcel of land. After the purchase, he had a survey done and realized that the partition fence encroaches on his land 10 feet. He talked to the neighbor, but she refused to agree to move the fence. What can my client do?**

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# **BOUNDARY BY ACQUIESCENCE**

# Boundary by Acquiescence

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- If parties acquiesce or “mutually recognize” for a period of at least 10 years that a fence is the boundary line between them, it becomes the boundary line.



# Boundary by Acquiescence

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- Acquiescence can be inferred from the "silence or inaction of one party who knows of the boundary line claimed by the other and fails to dispute it for a ten-year period."

# Boundary by Acquiescence Established

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## Mapes v. Eledge, No. 14-1770 (Iowa Ct. App. Oct. 28, 2015)

- Historical owners of properties had for decades recognized invisible line between phone box and a red post as the boundary line between the two properties.
- Neighbors and prior owners testified for plaintiff, saying that all owners had recognized this boundary.
- A split-rail fence had separated the properties on the same “line”; however, the fence had been in place for fewer than ten years.
- “A fence or some other consistently solid barrier is not necessary to establish the boundary line.” “The boundary must be definitely marked ‘in some manner.’”

# Boundary by Acquiescence Established

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*Nafziger v. Pender*, 2016 Iowa App. LEXIS 23 (Iowa Ct. App. Jan. 13, 2016).

- Plaintiffs brought their action to establish a disputed boundary.
- Since at least 1992, the parties' properties had been separated by a fence that was approximately 33 feet from the actual survey line.
- The fence encroached upon the plaintiffs' land.
- When the defendants began to sell their property, the plaintiffs brought their action.
- The district court ruled that a boundary by acquiescence had been established.

# Speak Up!

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- On appeal, the Iowa Court of Appeals agreed.
- Although the plaintiffs argued that their predecessors in interest **did not believe the fence was the property line**, the court said that **was immaterial**.
- What mattered was whether the plaintiffs (and their predecessors in interest) had *acquiesced* or “mutually recognized” for a period of at least 10 years that the fence was the boundary line between them. (Tacit Approval Sufficient)

# Landscaping is Sufficient

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- *Eddy v. Perrine*, 2014 Iowa App. LEXIS 570
- (Iowa Ct. App. May 29, 2014)
  - Parties were adjacent landowners.
  - Properties were separated by a semi-circular landscaped edge, which encroached upon actual boundary line of one landowner.
  - Landscape edging, installed and still present from over 20 years ago, sufficiently establishes the requirement that the edge be *"definitely marked by fence or in some manner."*





# IOWA AGRICULTURAL LIENS: *A LEGAL REVIEW*

By Kristine A. Tidgren<sup>1</sup>  
September 30, 2016

## Overview

During a financial downturn, the law of secured transactions becomes more important. More financial impairment means more disputes over who has priority in a pot that's not large enough to go around. During these times, a key, but sometimes overlooked, component of debtor-creditor law—the law of agricultural liens—rises in importance. This fact sheet provides readers with a review of agricultural lien law in Iowa, including the creation, perfection, and enforcement of these nonconsensual, statutory liens.



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### Read our April CALT Brief



Our April newsletter summarizes key happenings in agricultural and tax law for the month of April. Included is a review of the 2019 Iowa Legislative Session and its impact on agricultural producers and landowners.

[Edit Feature](#)

### Upcoming Events

May 13, 2019 [WEBINAR: What You Need To Know About The Farm Syndicate Rule](#)

May 14, 2019 [AALA Webinar: Examining the Farm Financial Climate and Counseling...](#)

Jul 18 to Jul 19, 2019 [ONSITE and ONLINE: Summer Seminar](#)

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# THE AG DOCKET

## *Perspective on Current Agricultural Law Issues*

### Despite Guidance, Lots of Questions Remain Regarding Rental Income

August 13, 2018

Kristine A. Tidgren

Treasury and the IRS released IRC § 199A proposed regulations, [REG-107892-18](#), on August 8, 2018. These are proposed regulations, but taxpayers can rely on them until final rules are adopted. The proposed regulations define “trade or business” as an IRC § 162 trade or business (other than the trade or business of performing services as an employee). (Proposed § 1.199A-1(b)(13)). They do not provide bright-line standards or a safe harbor regarding this definition. This leaves many questions unanswered regarding what rental income will qualify for the 199A deduction. And this question impacts many in farm country. In Iowa, for example, 53 percent of Iowa farmland was leased in 2017, with the majority of these leases being cash rent leases. This post reviews the status of current law and addresses the gray that remains.

#### Background

Section 199A requires that qualified business income eligible for the 199A deduction must come from a “qualified trade or business.” The proposed regulations state that for purposes of 199A, IRC § 162(a) provides the most appropriate definition of “trade or business.” IRS notes that the definition is “derived from a large body of existing case law and administrative guidance interpreting the meaning of trade or business in the context of a broad range of industries.” IRS states, “Defining trade or business as a section

## The CALT BRIEF

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### IRS Extends March 1 Filing Deadline for Farmers

At the last hour, IRS announced in Notice 2019-17 an extension to the March 1 deadline for farmers who did not make estimated tax payments by January 15, 2019. Under this Notice, farmers have until April 15 (April 17 in Maine or Massachusetts) to file their 2018

returns and pay in full any tax due. The Notice waives the IRC section 6654 penalty for failure to make estimated tax payments for these farmers and fishermen, *but the relief must be requested*. Continue reading [here](#).



Iowa Department of  
**REVENUE**

### Iowa Department of Revenue Follows Suit

IDOR also announced on February 28, 2019 that it too would grant an extension to the March 1 deadline for farmers and fishermen who did not make estimated tax payments by January 15, 2019. **These farmers will have until April 30** to file their Iowa returns and pay their income taxes without incurring estimated tax penalties. Read more [here](#).



### U.S. Supreme Court Agrees to Hear Key Clean Water Act Case



### It Was Probably Too Good to Be True

In late breaking news, the [U.S. Court of Appeals for the District of Columbia reversed](#) the district court and ruled that IRS **does** have the authority to charge tax return preparers a fee for obtaining and renewing a PTIN. *Montrois v. United States*, No. 17-5204 (D.C. Cir. March 1, 2019).

So much for the refund!



# Twitter: @CALT\_IowaState



The image shows a screenshot of the Twitter profile for the Center for Agricultural Law and Taxation (CALT) at Iowa State University. The profile picture is a red circle with the text "IOWA STATE UNIVERSITY" and "CALT" in yellow, with "Center for Agricultural Law and Taxation" in smaller text below. The header image is a photograph of a farm with a blue-roofed barn and red silos in a green field. The statistics bar shows 1,868 tweets, 683 following, 1,453 followers, 272 likes, 0 lists, and 0 moments. The bio states: "Center for AgLaw&Tax @CALT\_IowaState Iowa State University's Center for Agricultural Law and Taxation. #Aglaw #Farm and Urban #Tax. Estate and Business Planning. Nationwide Cont. Ed. Provider. #ag Ames, IA". The tweets tab is selected, showing a tweet from AALA (@AmAgLaw) about a webinar on May 14, co-hosted by AALA and CALT, with the link [calt.iastate.edu/seminar/2019-0...](http://calt.iastate.edu/seminar/2019-0...). The tweet has 2 retweets and 0 replies.

**IOWA STATE UNIVERSITY**  
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**1,868**   **683**   **1,453**   **272**   **0**   **0**

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Join us on May 14 for a FREE webinar on counseling farm clients in the current farm financial climate. The event is co-hosted by the American Agricultural Law Association and the Center for Agricultural Law and Taxation. [calt.iastate.edu/seminar/2019-0...](http://calt.iastate.edu/seminar/2019-0...)

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# Questions?



